Decision **PROPOSED DECISION OF ALJ SULLIVAN (Mailed 2/11/03)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company in the 2000/2001 Revenue Adjustment Proceeding.	Application 01-09-006 (Filed September 4, 2001)

(See Appendix A for a list of appearances.)

DECISION RESOLVING OUTSTANDING ISSUES IN EDISON'S 2000/2001 REVENUE ADJUSTMENT PROCEEDING

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DECISION RESOLVING OUTSTANDING ISSUES IN EDISON'S 2000/2001 REVENUE ADJUSTMENT PROCEEDING

1. Summary

This decision deems the Southern California Edison Company's (Edison) administration of its special contracts during the period from April 1, 1999 through July 31, 2001 reasonable. In particular, we find that Edison evaluated its special contracts in a manner consistent with Commission decisions and precedents.

In uncontested matters, we find Edison's implementation of its Low Emission Vehicles (LEV) programs, which include the Electrical Vehicle (EV) programs, and the costs it incurred during the period from April 1, 1999 through July 31, 2001 reasonable. Similarly, we find that Edison's Reliability Must-Run (RMR) Compliance Report, Chapter IV of Ex. 1, fulfills the reporting requirements of Ordering Paragraph (OP) 3 of D.01-01-019.

With the resolution of these outstanding issues, we close this proceeding.

2. Background and Procedural History

In Decision (D.) 97-10-057, the Commission established the Transitional Revenue Account (TRA) and the Revenue Adjustment Proceeding (RAP). The Commission has twice previously resolved such proceedings. D.99-06-058 resolved the 1998 RAP. D.01-01-019 resolved the 1999 RAP.

The original purpose of the RAP was to review, track and compare Edison's authorized revenue requirements with actual recorded revenues and to authorize any necessary adjustments or updates to Edison's authorized revenues. Over the course of several filings, the Commission expanded the scope of the

RAP to include such issues as reasonableness reviews of Edison's LEV Program[1], Edison's administration of its special contracts, and Edison's report on Federal Energy Regulatory Commission (FERC) decisions regarding the recovery of RMR costs in the wholesale market.[2]

On September 4, 2001, Edison filed its 2000/2001 RAP application seeking to resolve a series of issues pertaining to its operations and certain regulatory accounts. The Office of Ratepayer Advocates (ORA) filed a timely protest. At the October 22, 2001 prehearing conference (PHC), we determined to review Edison's filing separately from that of Pacific Gas and Electric Company (PG&E). In light of other regulatory developments, we granted Edison a continuation of the PHC to December 3, 2001.

On November 30, 2001, Edison amended its application, because a Settlement Agreement between Edison and the Commission[3] necessitated changes. ORA filed a timely protest to the amended application. In its January 29, 2002 response to ORA's protest, Edison noted that it had uncovered an error in its testimony, and stated that it would file Errata replacing part of its testimony. On February 26, 2001, via letter, Edison proposed a schedule for resolving the outstanding issues in this proceeding and noted ORA's acquiescence to it.

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[1] D.99-06-058, (1999 Cal. PUC LEXIS 316)

[2] D.01-01-019, OP 3 (2001 Cal. PUC LEXIS 45).

[3] Settlement Agreement Between Edison and the California Public Utilities Commission dated October 2, 2001 in *Edison v. Loretta Lynch, et al.* United Stated District Court for the Central District of California, Case No. CV-00-10256-RSWL(Mcx).

In the amended application, Edison proposed that the principal issues to be considered involve Commission approval of:

> "The reasonableness of SCE's [Southern California Edison] costs and expenses incurred in connection with SCE's Commission-approved Low Emission Vehicle Programs and SCE's operation and administration of those programs;
>
> "The administration of SCE's Special Contracts with Dow Chemical Company, Mobil Oil Company, TOSCO and Eisenhower Medical Center."[4]

In addition, Edison asked that the Commission approve its compliance with OP 3 of D.01-01-019 regarding Edison's reports to FERC on the recovery of RMR costs.

ORA's protest did not take issue with the scope of the proceeding. On an issue raised by The Utility Reform Network (TURN) concerning the calculation of certain credits at the December 3, 2001 PHC, ORA noted that "the methodology of calculating the Post-Power Exchange (PX) closure Direct Access Credit was moved to a separate docket, A.98-07-003."[5] ORA stated that it supports the removal of this issue from this proceeding. TURN did not file a protest or a reply, and this issue was not addressed in this proceeding.

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[4] Amended Application of Edison (U338 E) in the 2000/2001 RAP, November 30, 2001, page 5.

[5] Protest of the ORA to the Amended 2000/2001 RAP Application of Edison, January 14, 2002, p. 2.

There was no dispute concerning the scope of this proceeding, and the Scoping Memo of March 8, 2002[6] affirmed that this proceeding included issues concerning LEVs, Special Contracts, and compliance with OP 3 of D.01-01-019.

Evidentiary hearings were held on June 3, 2002. Edison and ORA filed opening briefs on July 8, 2002. In addition, Edison filed a motion to strike portions of ORA's testimony.[7] With the submission of reply briefs, the case was deemed submitted as of July 22, 2002.

We first address the central disputed issue in this proceeding – the reasonableness of the special electric contracts – and subsequently review issues concerning LEV and Edison's compliance with OP 3 of D.01-01-019.

3. Reasonableness of Edison's Special Electric Contracts

In D.87-05-071, the Commission authorized Edison to offer electricity under special contracts.[8] Under these contracts, certain customers that could have bypassed Edison's system by installing equipment to generate their own electricity can pay discounted electric rates in exchange for their agreement not to leave the system. The Commission authorized Edison to offer contracts designed to retain customers via rates attractive enough to dissuade those customers from generating electricity themselves. At the same time, the Commission sought to assure that those customers receiving discounts continued

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[6] Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge (ALJ), issued on March 8, 2002.

[7] Motion of Edison (U 338-E) to Strike Portions of ORA Testimony in the 2000/2001 RAP, A.01-09-006, July 8, 2002 ("Motion").

[8] 1987 Cal. PUC Lexis 782; 24 CPUC 2d 412.

to pay at least the marginal cost of the service the utility provided. The Commission found that "[s]pecial contracts can be useful in retaining potential bypassers on the system and in increasing sales to existing customers"[9] and that "[s]pecial contracts can provide an overall benefit to ratepayers."[10]

In D.88-03-008,[11] the Commission adopted guidelines for the assessment and expedited approval of special contracts. The special contracts were designed to incorporate a floor price based on the Commission's understanding of the utility's marginal cost to serve the contract customers, thereby assuring that the contracts recovered at least the Commission-approved marginal costs.

During the period under review in this proceeding, ORA has challenged the reasonableness of three of Edison's special contracts: those with Dow Chemical Company (Dow), Mobil Oil Company (Mobil) and](Tosco).[12] A fourth contract, with Eisenhower Medical Center, was fulfilled in May 1996, and all power is currently purchased at tariff rates. There is no dispute concerning this contract.

Edison: All Contracts Comply with Commission Adopted Guidelines – No Disallowance Warranted

Edison asserts that it demonstrated that all three contracts at issue here reflect a price floor based on the adopted marginal cost in effect when the

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[9] *Id.,* *40, Finding of Fact 21.

[10] *Id.,* *40, Finding of Fact 22.

[11] 1988 Cal. PUC Lexis 135; 27 CPUC 2d 464.

[12] See ORA, Reply Brief, p. 1, fn. 1.

contracts were signed, and that the marginal cost is both defined specifically in the contracts approved by the Commission, and consistent with the guidelines adopted in D.88-03-008. Moreover, Edison argues that ratepayers have benefited from Edison's special contracts because the rates charged in the contract during the period under review exceeded the tariffed or otherwise applicable rate by $14.3 million.

Edison also points out that during the period under review, ORA's definition of marginal price – the daily PX prices – not only exceeded the contract price, but also the tariffed price as well. Edison states that the logic of ORA's argument would require ORA to conclude that "every customer on the system should pay a marginal cost based on the PX price, not just the special contract customers."[13] Moreover, Edison argues that ORA did not distinguish between special contract customers and the impact on other customers. Edison concludes that the logic of ORA's position would necessitate that the Commission increase all customers' rates during this period of review.

In addition, Edison asserts that ORA did not challenge Edison's assertions that the contracts complied with past decisions, that the contracts were approved in decisions, and that the decisions and contracts all specified how to calculate the Contribution to Margin (CTM). Edison argues that ORA admitted that its recommended disallowance is not based on any Commission decisions[14] but instead proposes a new marginal cost to substitute "for the original adopted marginal cost in effect when the contracts were signed, and that the new

[13] Edison, Opening Brief, p. 13.

[14] Edison, Opening Brief, p. 6, fn. 9, citing TR 48 and 75.

standard should be imposed retroactively."[15] Edison argues that ORA's appropriate course of challenge was to petition the Commission to "modify these prior decisions … before submitting its testimony recommending adoption of a new marginal cost."[16] In its Motion, Edison concludes that ORA's failure to petition to modify these decisions makes its entire case an "impermissible collateral attack on those [prior] decisions in violation of Pub. Util. Code § 1709"[17] and therefore should be stricken.

In its Reply Brief, Edison notes that ORA's discussion of the Commission's guidelines fails to "quote or describe the actual special contract guidelines the Commission adopted, nor does ORA acknowledge that the goals and objectives the Commission intended to accomplish were embodied in the adopted guidelines."[18] Edison argues that it has complied with the specific guidelines adopted in D.88-03-008.

Finally, Edison disputes ORA's allegation that the Procurement Related Obligations Account (PROACT) also includes $56 million from the former Transition Cost Balancing Account (TCBA) and contends that ORA does not understand "the implementation of the Settlement Agreement between SCE and the Commission that resulted in the establishment of the PROACT."[19] Edison asserts that "even if one were to assume for purposes of argument that there

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[15] *Ibid.*

[16] *Ibid.*

[17] Edison, Motion, Section IV.

[18] Edison, Reply Brief, p. 3.

[19] Edison, Reply Brief, p. 6.

were a $56 million revenue shortfall from Special Contract Customers, it does not follow that this shortfall was transferred from the TCBA into the PROACT."[20] Edison makes a long and detailed argument that concludes that "the opening balance of the PROACT was determined by negotiation"[21] and therefore "there is no direct relationship between the undercollection in SCE's TCBA and the PROACT starting balance."[22] Edison concludes that since the settlement replaces the shortfall with the "opening balance in the PROACT,"[23] there is nothing further owed to ratepayers.

ORA: Revenue Shortfall from Edison's Special Contracts is About $56 Million

ORA argues that the "record demonstrates that SCE has failed to properly compute the CTM associated with its special contracts (Special Contracts) in accordance with long-standing Commission guidelines and therefore must be directed to recalculate costs of service for Special Contract customers to reflect generation costs incurred in Schedule PX . . . during the review period."[24]

More specifically, ORA argues that the Commission-adopted guidelines for special contracts, "ensure that other ratepayers were not unreasonably disadvantaged by the contracts."[25] ORA believes that Edison has failed to "meet

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[20] *Ibid.*

[21] *Id.*, p. 7.

[22] *Id.*, pp. 7-8.

[23] *Id.*, p. 9.

[24] ORA, Opening Brief, pp. 1-2.

[25] ORA, Opening Brief, p. 3.

the Commission's policy objectives because it does not reflect the actual costs to serve those customers, and therefore inappropriately transfers responsibility for any revenue shortfall from shareholders to ratepayers."[26]

ORA estimates that Edison's methodology for calculating CTM "generated a revenue shortfall of about $56 million that consequently will become the obligation of SCE ratepayers."[27] ORA states that the "marginal costs (specifically the energy and generation capacity costs) represented by the Standard Offer 1 (SO1) energy and capacity values during most of the review period were inadequate to cover the full costs to serve its customers on Special Contracts."[28]

ORA also states that Edison failed to file reports concerning its revenue shortfalls. ORA "finds Edison's 'inadvertent oversight' to be quite troubling, since if these monthly reports had been filed in a timely fashion, it is likely that the situation would not have been allowed to continue to the point where a potential $56 million ratepayer subsidy would be an issue."[29]

In its Reply Brief, ORA defends its failure to make a request to modify D.88-03-088, stating that "[b]ecause Edison failed to notify the Commission when the CTM for its Special Contracts turned negative, ORA was unaware of the situation and therefore, saw no reason to modify D.88-03-088."[30] ORA argues

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[26] *Id.*

[27] ORA, Opening Brief, pp. 4-5.

[28] *Ibid.*, p. 4.

[29] ORA, Opening Brief, p. 10.

[30] ORA, Reply Brief, p. 2

that it was Edison's failure to adhere to Commission reporting requirements that "made ORA unaware of the need to modify that decision."[31]

Finally, ORA responds that Edison has failed to show that its floor revenues actually reflect its costs to service those customers on special contracts. ORA alleges that if "Edison's shareholders do not pick up the revenue short fall in the cost of serving these customers, Edison's other ratepayers will end up subsidizing these expenses by default, contrary to the express provisions of D.90-12-128."[32] ORA asserts that its use of Schedule PX as a proxy for the cost to serve is appropriate, and yields a "total disallowance of around $56 million during the record period."[33] ORA concludes its argument by urging that the Commission "require Edison to recalculate the CTM."[34]

Discussion: Edison Follows Commission-set Methodology and Procedures

The key precedents for establishing the reasonableness of Edison's Special Contracts are the Commission decisions establishing and applying policies to both Edison's and PG&E's special contracts and the specific decisions reviewing each of Edison's special contracts.

D.88-03-008 (1988 Cal. PUC LEXIS 135; 27 CPUC 2d 464) adopted specific rules for the assessment and expedited approval of special contracts. This decision specifies the marginal cost floor price that a special contract must meet.

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31 *Id.*, pp. 2-3.

32 ORA, Reply Brief, p. 4.

33 *Id.*, p. 5.

34 *Id.*, p. 6.

OP 1.a states that a marginal cost floor price must contain the following elements:

> A floor price consisting of an energy component, a transmission and distribution (T&D) component, and a generation component. The energy component shall be equivalent to the utility's Standard Offer No. 1 energy price. The T&D component shall be based on the marginal T&D cost established in each utility's most recent general rate case . . . The generation component shall be based on each utility's Standard Offer No. 1 capacity price, including adjustments based on the utility's most recently established Energy Reliability Index . . . The energy component of the floor price shall be time-differentiated."[35]

The Commission subsequently reaffirmed the criteria adopted in D.88-03-008 when it reviewed a number of PG&E special contracts in D.90-12-128. In particular, the D.90-12-128 expanded on how the Commission planned to evaluate all special contracts. Specifically, D.90-12-128 developed the concepts of the floor price and the CTM:

> the Commission concluded that, in order to receive expedited approval, a contract should include a floor price designed to assure that the utility recovers from the customers no less than the lowest price possible that does not disadvantage other ratepayers in either the short or long run.[36]

This floor price, when multiplied by the customer's specific usage data, yields the "floor revenues,"[37] the minimum amount that must be recovered under the contract. In D.90-12-128, Conclusion of Law 5 states: "The adopted marginal

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[35] D.88-03-008, OP 1.a.

[36] D.90-12-128; 1990 Cal. PUC Lexis 1415, *14 - *15.

[37] *Ibid.*

cost in effect at the time should be used to determine reasonable floor revenues."[38]

One other concept, the CTM, is important in the evaluation of the special contracts. To calculate the CTM, the floor revenues are subtracted from contract revenues. This, in turn, sets the standard for reasonableness, for "[i]t would be unreasonable for a utility to enter into a contract that can reasonably be foreseen as not providing a preferable CTM."[39]

Each of the three contracts in dispute and its floor price were reviewed in a previous Commission decisions. These decisions reviewed the terms of the contracts to determine whether the contract's prices are high enough to insure that other ratepayers are not unreasonably harmed. D.88-12-097 approved the Dow contract. D.94-03-075 found that the terms of the agreement with Mobil were "reasonable and should be approved."[40] D.95-06-055 found that the terms of the agreement with Unocal/Tosco were "reasonable."[41] For each of these contracts, all amendments to the contracts were reviewed and approved in Commission decisions.[42] In addition, "all three of the contracts define the short run avoided cost (SRAC) as the energy price to be used in the calculation of the price floor."[43] Moreover, there is no allegation by ORA that Edison failed to

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[38] 1990 Cal. PUC Lexis 1415, *68 - *69; 39 CPUC 2d 183.

[39] D.90-12-128; 1990 Cal. PUC Lexis 1415, *69, Conclusion of Law 9.

[40] 1994 Cal. PUC LEXIS 230, *10, Finding of Fact 6.

[41] 1995 Cal. PUC LEXIS 476, *30, Conclusion of Law 5.

[42] Ex. 1, pp. 32-35.

[43] Ex. 2, p. 3.

comply with the contract-specified price floors or that Edison's calculation of CTM contained any errors. No subsequent Commission decision changed these contracts or the method that Edison was to use for calculating marginal costs or price floors.

Further, no party requested either in its protest to Edison's application or at the PHC that the Commission use this proceeding to alter the methodology for calculating marginal costs or price floors. The March 8, 2002 Scoping Memo in this proceeding does not identify alteration of the methodology for calculating marginal costs as within the scope of this proceeding. The scope set in the March 8, 2002 Ruling is consistent with a long history of Commission rulings in RAP proceedings. Prior to the first annual RAP, a Coordinating Commissioner's Ruling of May 14, 1998 identified the functions of the annual RAP proceeding:

> "Function: Consolidate revenue requirement adjustments; authorize recovery of preceding calendar year's revenue requirements; adjust authorized revenue requirements for current calendar year; verify and adjust as appropriate headroom calculation from Transition Revenue Account (TRA); authorize headroom credit to TCBA
>
> Function: Streamlining of other balancing accounts and implementation of ratemaking mechanisms for end of transition period
>
> Function: Revenue allocation and rate design"[44]

Thus, the Commission established firm parameters at the start of this series of proceedings that did not include a reexamination of marginal cost methodologies

[44] Coordinating Commissioner's Ruling Setting Filing Dates for RAP, May 14, 1998, Attachment 1.

in this proceeding. This proceeding has followed these parameters and made it clear that we did not intend to reexamine marginal cost methodology. Moreover, no party requested that the Commission expand the scope of this proceeding to review marginal cost methodology.

In its brief, ORA does offer an argument addressing the issue of past precedential decisions. ORA states that "[h]olding ORA to the requirement to modify D.88-03-088 is inappropriate when one considers that Edison's own failure to adhere to Commission mandated reporting requirements made ORA unaware of the need to modify that decision."[45]

This argument, however, does not persuade us to ignore either Pub. Util. Code § 1708, which requires that the Commission furnish notice to parties and provide them "with an opportunity to be heard as provided in the case of complaints. . ."[46] or § 1709, which prohibits collateral attacks on commission discussions. Although Edison was clearly in error over its failure to file reports, ORA's argument that this error caused ORA to fail to understand that the electricity crisis that confronted California would lead to higher power costs is unpersuasive. In particular, ORA's own testimony in Application 01-06-003, the PG&E RAP, (dated January 9, 2002) made it clear that it understood that the costs of acquiring power for special contracts had risen dramatically and had direct consequences for the evaluation of the reasonableness of special contracts.[47] In addition, ORA's January 14, 2002 protest to Edison's amended application does

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[45] ORA, Reply Brief, pp. 2-3.

[46] All references are to the Public Utilities Code unless otherwise noted.

[47] See the discussion of ORA's testimony contained in D.02-10-019.

not identify the methodology for evaluating marginal cost or setting price floors as an issue in dispute.

We do not accept ORA's agreement that Edison's error in failing to complete a mandated report deprived ORA of the information that would cause it to file a petition to modify D.88-03-088. The information on high energy prices was widely available and ORA itself had specific experience with the consequences of high energy costs and marginal cost methodology for the evaluation of special contracts. Moreover, even now ORA does not acknowledge that accepting its argument would also require the Commission to either ignore, modify, or supersede D.88-12-097, D.94-03-075 and D.95-06-055, which each specify the marginal cost methodology to be used in evaluating special contracts, in addition to D.88-03-088.

Similarly, the fact that electric markets were distorted during this period does not justify adopting a distorted price as the measure of marginal cost. In particular, ORA's argument that the actual cost of procuring electricity during the record period is "captured in Schedule PX"[48] is not persuasive. First, the Commission has never "made the determination that the Power Exchange is functioning properly for the purpose of allowing short run avoided cost to be determined by the PX price."[49] Second, the Federal Energy Regulatory Commission (FERC) has found the Schedule PX prices unreasonable, and is

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48 ORA, Opening Brief, p. 5.

49 Ex. 3, p. 7.

actively investigating allegations of market manipulation by energy companies.[50] Thus, there is no basis for concluding that what Edison and other California utilities paid for electric power in this period had any relation to cost. As a result, it is neither plausible nor reasonable to use these prices as an acceptable "marginal cost" methodology for reviewing the reasonableness of contracts and supporting a $56 million disallowance.

In addition to the unreasonableness of using Schedule PX as the methodology for setting a fair marginal cost during this period, there is no legal basis for this action. ORA's proposal to require Edison to re-calculate the floor revenues and CTM for the 1999 and 2000 special electric contracts by using the daily PX price for the adopted energy and generation capacity as marginal cost would violate Commission decisions governing the determination of the CTM. Indeed, if we were to accept ORA's proposed reasonableness standard and methodology, Edison could only have avoided a disallowance by charging approximately $56 million more for power over this period. To do so, however, Edison would have had to violate the statutorily-based Commission decisions implementing the rate freeze, and petition the Commission to modify five decisions -- D.88-03-008, D.88-12-097, D.90-12-128, D.94-03-075, and D.95-06-055. It is unclear that such a course of action would be lawful.

Further, ORA's request to adopt a new marginal cost standard fails to note that during the months when the CTM was negative under the special contracts, if these customers had not been on the special contracts, but had instead paid the

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[50] San Diego Gas and Electric Company, et. al., 93 FERC ¶ 61, 121 (2000) ("November 1 Order"), ER 301; 2000 FERC LEXIS 2168, *3.

"otherwise applicable" or "tariffed" rate, they would have contributed substantially lower revenues to SCE's margin.[51] With one exception, in every month when the customers' CTM was negative, customers paid a ceiling bill that was substantially higher than the bill they would have paid if their contracts had been terminated.[52] This result arises because during this time period, the PX prices exceeded the tariff price both for the special contract customers and for every other customer class on the system. Thus, the Commission would need to conclude that prices in special contracts that exceeded those charged under tariffs were unreasonably low, yet somehow simultaneously conclude that the still lower tariff prices are reasonable. Finally ORA fails to explain why special contract customers should pay the "PX price," but no other customer class should meet this proposed standard. Such an explanation for differing treatment, should the Commission adopt ORA's recommendation, would be necessary because our precedents state:

> At a minimum, each customer on the system must pay the full marginal cost for the service it receives, whether or not it is being served under a special contract.[53]

This policy applies to all customers. In contrast, Edison's testimony concerning the reasonableness of the special contracts follows the Commission-adopted

[51] Tr. 20: L22-21: L2; Ex. 3, pp. 12-13; Edison Opening Brief, p. 9.

[52] Edison Opening Brief, p. 10; The only exception is that under the Tosco contract for January 2001, the project bill was lower than the ceiling bill, so the customer paid the project bill. Still, in that month, Tosco's project bill was almost $230,000 higher than it would have been under the otherwise applicable rate.

[53] D.90-12-128 (1990 Cal. PUC Lexis 1415), Conclusion of Law 7. Emphasis added.

methodology for each contract in a straightforward way. Edison uses the SRAC, which "is clearly defined in each Self Generation Deferral Rate (SGDR) contract as the proxy to be used to calculate the SGDR Floor Price."[54] Edison points out that "none of the SGDR contracts authorizes the use of any successor schedule to replace SRAC."[55] Each contract clearly defines the "Short Run Avoided Cost as the energy price to be used in calculation of the floor price."[56] In addition, since in those months when special contracts produced a negative CTM contract revenues exceeded those that tariffed rates would produce, it makes little sense to penalize contracts by imposing a new cost standard on these sales while ignoring the deficiencies of tariffed rates during the same period. This is particularly true because there is almost no evidence that the PX rates charged during this period constitute a "reasonable" price – instead, both this Commission and FERC have found these energy costs to be unreasonable.

In summary, we find Edison's evaluation of its special contracts is consistent with the Commission's methodology for calculating revenue floors and CTM as required by D.88-03-008, D.88-12-097, D.90-12-128, D.94-03-075, and D.95-06-055. ORA's proposal to modify the marginal cost methodology to use the PX price as a measurement of marginal cost is outside the scope of this proceeding and is inconsistent with D.90-12-128 and § 1708.

Thus, we reject ORA's recalculation of floor revenues and decline to order Edison to conduct any recalculations using Schedule PX prices. No adjustments

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[54] Ex. 3, p. 3.

[55] *Ibid.*

[56] *Ibid.*

are needed in any account.[57] Edison's administration of these contracts is reasonable.

4. Other RAP Issues

As mentioned above, there was no dispute between Edison and ORA concerning any of the other issues in this proceeding. Edison presented testimony on each issue, and ORA responded with testimony on most issues. We describe each of these issues, the resolution proposed, and the reasons for adopting the proposed resolution.

LEV Cost Review

On November 21, 1995, the Commission issued D.95-11-035, which approved funds for use by Edison for Commission-approved LEV programs. On April 5, 1966, the Commission approved Edison's Advice Letter 1142-E, which established EV memorandum and balancing accounts, and set forth the mechanism for cost recovery and reasonableness review of costs. This reasonableness review of costs took place as part of Edison's annual Energy Cost Adjustment Clause (ECAC) filing. Following the final ECAC filing, in June of 1998, Edison requested that the cost recovery and reasonableness review be incorporated into the RAP. This RAP reporting period covers the 27-month period of May 1, 1998 through July 31, 2001.

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[57] Edison filed a motion to strike from the record all evidence related to ORA's marginal cost proxy proposal on July 8, 2002. ORA's Reply Brief argues that Edison's motion "should be rejected as a transparent attempt to inappropriately influence the outcome of this proceeding in its favor." Although the legal arguments offered by Edison concerning the scope of the proceeding are compelling and not specifically rebutted by ORA, at this point in the proceeding consideration of Edison's motion to strike is moot. Edison has prevailed both on the merits and on the law.

During this twenty-seven month period under review, Edison recorded EV-related expense and capital expenditures of $8,670,200.[58] This figure includes EV-related expenses totaling $7,082,500, consisting of model EV Fleet Vehicle expenditures ($255,900), a system impact/assessment program expenditures ($3,806,400), technology introduction expenditures ($1,197,200), overhead and administration expenditures ($1,610,800) and RD&D expenditures ($212,200).[59] Capital expenditures during this period totaled $1,587,700, consisting of residential infrastructure investments ($29,500), commercial infrastructure investments ($33,400), EV purchases and utility recharging infrastructure ($1,516,000), system impact/assessment capital expenditures ($9,200).[60] Edison desires that the Commission "find that the EV Programs have been reasonably implemented and costs reasonably incurred during the Record Period."[61] Edison then provides a detailed discussion of each element of the EV Program.

ORA states that it has reviewed the expenditures, and based its review "on guidelines established by the Commission in D.95-11-035."[62] ORA "finds SCE's implementation of its EV programs and associated costs during the 6th period are within the approved budget and in accordance with guidelines set forth in D.95-11-035."[63] ORA further notes that "the remaining EV balance from the

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58 Ex. 2, p. 2.

59 *Id.*, p. 24.

60 *Id.*, pp. 24-25.

61 *Id.*, p. 1.

62 Ex. 100, p. 3-2.

63 *Ibid.*

approved budget, in 1996 dollars, is approximately $27 million."[64] Finally, ORA states that, based on its review of the testimony, workpapers, and responses to data requests, and the standards in D.95-11-035, it recommends "that the Commission find the implementation and associated costs incurred by SCE during the Record Period in the implementation of its EV program reasonable."[65] There is thus no controversy over this issue.

Our own review of the materials provided by Edison leads us to the same conclusion – that the LEV programs, including the EV Programs, have been reasonably implemented and costs reasonably incurred during the Record Period.

RMR Compliance Report

In D.01-01-019, the Commission ordered:

> In Edison's next RAP application, Edison shall delineate the efforts it has undertaken at the Federal Energy Regulatory Commission ("FERC") to recover a fair share of Reliability Must-Run Costs ("RMR") from its wholesale customers.[66]

To comply with this ordering paragraph, Edison reports that:

> On November 1, 2000, SCE filed, in FERC Docket No. ER01-315-000, proposed changes to the method for recovering RMR costs by assessing such costs to all Transmission Owner Tariff ("TO Tariff") customers with loads located in SCE's historic control area, which is now part of the ISO Control Area.[67]

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[64] *Ibid.*

[65] *Ibid.*

[66] D.01-01-019 (2001 Cal PUC LEXIS 45), OP 3.

[67] Ex. 1, p. 38.

Edison reports that this Commission intervened in the FERC proceeding, that FERC accepted SCE's TO Tariff amendments for filing, made them subject to refund, and scheduled a hearing. Settlement discussions took place, leading to an agreement in principle. Edison concludes its report stating:

> On September 12, 2001, FERC approved the settlement resolving the issue of recovering a share of RMR costs from SCE's wholesale customers for the term of the settlement.[68]

Edison asks that the Commission deem this report as complying with OP 3 of D.01-01-019.

ORA responds that after a review of the report above, "it appears SCE is in compliance with OP 3 of D.01-01-019."[69] Again, there is no controversy concerning this issue.

Our own review of the report contained in Edison's testimony leads us to conclude that it complies with the requirements of D.01-01-019.

5. Comments on Proposed Decision

The Proposed Decision of ALJ Sullivan in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

6. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Timothy J. Sullivan is the assigned ALJ in this proceeding.

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68 Ex. 1, p. 39.

69 Ex. 100, p. 4-1.

Findings of Fact

1. The Commission established the RAP as a proceeding in which it would: (1) consolidate revenue requirement adjustments; authorize recovery of preceding year's revenue requirements; adjust authorized revenue requirements for current calendar year; verify and adjust as appropriate the headroom

calculation from the TRA; and authorize headroom credit to the TCBA; (2) streamline other balancing accounts and implement ratemaking mechanisms for the end of the transition period; and (3) review revenue allocation and rate design.

2. In D.88-03-008, the Commission adopted specific rules for the assessment and expedited approval of special contracts. D.88-03-008, in OP 1.a, states that a marginal cost floor price must contain the following elements:

> A floor price consisting of an energy component, a transmission and distribution (T&D) component, and a generation component. The energy component shall be equivalent to the utility's Standard Offer No. 1 energy price. The T&D component shall be based on the marginal T&D cost established in each utility's most recent general rate case . . . The generation component shall be based on each utility's Standard Offer No. 1 capacity price, including adjustments based on the utility's most recently established Energy Reliability Index . . . The energy component of the floor price shall be time-differentiated.

3. In D.90-12-128, Conclusion of Law 5 states: "[t]he adopted marginal cost in effect at the time should be used to determine reasonable floor revenues" for special contracts.

4. D.88-12-097 reviewed and approved Edison's special contract with Dow.

5. D.94-03-075 reviewed and approved Edison's special contract with Mobil.

6. D.95-06-055 reviewed and approved Edison's special contract with Unocal/Tosco.

7. For each of these contracts, all amendments to the contracts were reviewed and approved in Commission decisions.

8. Each of the three contracts defines the SRAC as the energy price to be used in the calculation of the price floor.

9. There is no allegation that Edison failed to comply with the contract-specified price floors or that Edison's calculation of CTM contained any calculation errors.

10. No subsequent Commission decision changed these contracts or the method specified for Edison to use in calculating the marginal costs or price floors for these contracts.

11. No party requested that this proceeding include the issue of determining a new marginal cost methodology for special contracts.

12. The March 8, 2002 Scoping Memo in this proceeding does not identify alteration of the methodology for calculating marginal costs as within the scope of this proceeding. This ruling was not appealed.

13. No party to this proceeding has asked for modification or rehearing of D.88-03-008, D.88-12-097, D.90-12-128, D.94-03-075, or D.95-06-055 and the Commission has not modified any of these decisions.

14. During the period under our review, Edison administered four special electric contracts between Edison and Dow, Mobil, Unocal/Tosco, and Eisenhower Medical Center.

15. The marginal costs in effect during the period of review are those specified in each contract and reviewed by this Commission.

16. Edison used the marginal costs in effect during 1999 and 2000 to calculate the floor revenues and determine the CTM for its special electric and rate design window contracts during that time frame.

17. The Commission has never made the determination that the PX is functioning properly.

18. The FERC has found the Schedule PX prices unreasonable.

19. The distortions in energy markets during the review period make PX price a poor measure of marginal cost.

20. There is no legal basis for using unreasonable PX prices to determine the reasonableness of special contracts.

21. If Edison's special contract customers had paid the otherwise applicable rate during the months when the CTM was negative, they would have contributed substantially lower revenues to Edison's margin.

22. During the months with negative CTM, PX prices exceeded the tariff price for special contract customers and all other customers on the system.

23. No party to this proceeding offered a rational basis for evaluating special contracts with a "PX price" to determine the reasonableness of contract prices while simultaneously declining to hold tariffed services to this standard.

24. The rate freeze imposed by Pub. Util. Code § 368(a) applied to both contract and tariffed rates.

25. It is not reasonable to order Edison to recalculate floor revenues for its special contracts using Schedule PX prices.

26. During the twenty-seven month period under review, Edison recorded EV related expenses totalled $7,082,500.

27. The implementation and associated costs incurred by Edison during the record period in the implementation of its LEV programs are reasonable.

28. D.01-01-019 OP 3 orders Edison to delineate the efforts it has undertaken at FERC to recover a fair share of the RMR Costs from its wholesale customers, and Edison has done so.

29. Our review indicates that Edison has replied with the reporting requirements included in D.01-01-019.

Conclusions of Law

1. Edison performed the floor revenue and CTM calculations associated with its special electric contracts as required by D.88-03-008, D.88-12-097, D.90-12-128, D.94-03-075, or D.95-06-055. These calculations should be adopted.

2. No disallowance of costs associated with Edison's special contracts is warranted.

3. ORA's proposal to alter the marginal cost methodology used to calculate CTM is inconsistent with D.88-03-008, D.88-12-097, D.90-12-128, D.94-03-075, and D.95-06-055.

4. ORA addressed the fact that it proposed to modify past Commission decisions only in its brief, and this does not constitute adequate notice as provided by Pub. Util. Code § 1708, nor does it avoid the § 1709 prohibition against collateral attacks on the orders and decisions of the Commission.

5. Edison's motion to strike ORA's testimony concerning its proposed marginal cost methodology should be denied as moot.

6. Edison's LEV expenses incurred during the record period, including EV expenses, should be adopted as reasonable.

7. Edison's delineation of the efforts it has undertaken at FERC to recover a fair share of the RMR Costs from its wholesale customers included in its application should be accepted as complying with OP 3 of D.01-01-019.

8. Edison's motion to strike ORA's testimony concerning its proposed marginal cost methodology should be denied.

9. This decision should be effective today in order to resolve this proceeding expeditiously

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (Edison) administration of its special contracts during the record period from April 1, 1999 through July 2001, is authorized as reasonable.

2. Edison's implementation of its Low Emission Vehicles programs and the costs it incurred during the period from April 1, 1999 through July 31, 2001, is authorized as reasonable.

3. Edison's Reliability Must-Run Compliance Report, Chapter IV of Ex. 1, is authorized as fulfilling the requirements of Ordering Paragraph 3 of Decision 01-01-019.

4. Edison's motion to strike Office of Ratepayer's Advocates testimony concerning an alternate marginal cost methodology is denied.

5. Application 01-06-003 is closed.

This order is effective today.

Dated ___________, 2003, at San Francisco, California.

APPENDIX A

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Last Update on 24-DEC-2002 by: LIL
A0109006 LIST

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(END OF APPENDIX A)